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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ICON HEALTH & FITNESS, INC., v. WILBERT QUINCY MURDOCK, and PHILIP ALISTER WILLIAMS, Defendants.	Plaintiff, Case No. 1:21-CV-006 JNP District Judge Jill N. Parrish Chief Magistrate Judge Dustin B. Pead
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Before the court is Plaintiff Icon Health & Fitness, Inc.’s Motion for Extension of Time to Complete Service of Process and for Leave to Serve by Alternative Means.¹ Plaintiff seeks a 21 day extension of time to serve Defendant Philip Alister Williams. Plaintiff also seeks to serve Defendant Williams by emailing a copy of the “Declaratory Judgment Complaint (Complaint) and summons at the email address Williams uses to correspond with the USPTO concerning the patents at issue in this case” and mailing these same materials Defendant’s residence. (ECF No. 18 p. 1-2.) As set forth below, the court GRANTS the request for alternative service and extension of time to serve.

BACKGROUND

In December 2020, Defendants Wilbert Quincy Murdock and Philip Alister Williams, sent Plaintiff a cease-and-desist letter accusing Plaintiff’s “S22i Studio Cycle of infringing at least the patents-in-suit and demanded that ICON ‘cease and desist from all infringing activities.’” (ECF No. 18 p. 3.) Thereafter, ICON filed a Complaint against Defendants and

¹ This case is referred to the undersigned from District Judge Jill Parrish under 28 U.S.C. § 636(b)(1)(A). (ECF No. 7).

sought to serve Defendants at their homes. Plaintiff lists more than ten attempts to serve Defendant Williams via a process server or private investigator, and multiple times where Williams rejected service via FedEx delivery. ICON also sought to serve Williams via counsel that purportedly represented Defendants. Counsel, however, eventually declined acceptance of service. Plaintiff now seeks an extension to serve Defendant Williams and service via alternative means.

DISCUSSION

Under Fed. R. Civ. P. 4(e)(1), service in a federal district court action may be accomplished by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Utah Rule of Civil Procedure 4(d)(5) provides for alternative service “if there is good cause to believe that the person to be served is avoiding service.” If the court grants the motion, “the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action.” *Id.* Plaintiff proposes using Williams’ email address, mesoscopic10@gmail.com, which has been used with the USPTO for the patents at issue in this case, and mailing service to Defendant’s residence at 6 Eleanor Drive, Salt Point, NY 10469 to effectuate service.

Here, Plaintiff supports the motion with a proper affidavit that sets forth the efforts made to serve Defendant. (ECF No. 19.) Multiple attempts have been made, and multiple times an individual was home, but they would not answer the door or walk away after seeing the server. The court concludes that Plaintiff has demonstrated that Defendant Williams is seeking to avoid service. Thus, good cause exists to grant Plaintiff an extension to serve Defendant and to allow service via other means. Based upon the circumstances before the court, the court finds that

service by email and certified mail to Defendant's residence, is reasonably calculated to apprise Defendant of this action. Therefore, Plaintiff's motion is granted. *See, e.g., Greer v. Moon*, 2:20-CV-00647-TC-JCB, 2021 WL 568779, at *2 (D. Utah Feb. 16, 2021) (permitting service via email); *The Neck Hammock, Inc v. Danezen.com*, No. 2:20-CV-287-DAK-DBP, 2020 WL 6364598, at *4 (D. Utah Oct. 29, 2020) (concluding that service by email is permissible and generally superior to traditional mail).

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that:

Plaintiff's Motion for Extension of Time to Complete Service of Process is GRANTED.

Plaintiff's Motion for Alternative Service is GRANTED. Plaintiff is permitted to serve Defendant Williams by sending a summons, the Complaint, and a copy of this order to the email address set forth in the motion, and by traditional mail to Defendant's residence. Once the email is sent, Defendant shall be deemed served for purposes of Fed. R. Civ. P. 4 and 12(a).

IT IS SO ORDERED.

DATED this 5 May 2021.



Dustin B. Pead
United States Magistrate Judge